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ABSTRACT

The educational malpractice debate surfaced in the 1970's and has intensified during recent years. The fundamental issue is whether a student or a parent may seek monetary damages for negligence in classifying, placing, or teaching the student. The courts have consistently denied claims of educational malpractice, basing their decisions on controversial interpretations concerning judicial responsibility, the appropriateness of current negligence principles, the existence of a standard of care, the justification of monetary damages, the possibility of burdensome litigation, and the avenues of recourse available to the plaintiff. After briefly presenting the "case" against malpractice claims, this paper advances the proponents' "case," which turns on established principles of negligence as applied to nonteaching professions. A standard of care could be developed for the educational profession. Damages for psychological or emotional injury should apply to educational malpractice suits. School districts should not be exempt from malpractice claims, nor should plaintiffs be without remedy. The paper underlines judicial and professional responsibility to protect students' constitutional rights. All parties' interests are best served through administrative review, followed by legal action, if necessary. The court's primary concern should be to assist the district to correct erroneous acts and to minimize damage to the child's education. Included are several notes and four references. (MLH)

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THE CURRENT CONTROVERSY OF
EDUCATIONAL MALPRACTICE

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THE CURRENT CONTROVERSY OF
EDUCATIONAL MALPRACTICE

Identification of the Issues

During the 1970's, the issue of educational malpractice surfaced in the United States. The debate regarding educational malpractice has continued to intensify during recent years. The fundamental question is whether a student or his parents may seek money damages for the negligent classification, placement, or teaching of the student.

The courts have consistently denied claims of educational malpractice. Their decisions have been based on several controversial issues. The debate has centered on the involvement of the judicial system, the appropriateness of current negligence principles, the existence of a standard of care, the justification of money damages, the possibility of burdensome litigation, and the avenues of recourse that are available to the plaintiff.

The Case in Opposition to Educational Malpractice

The courts have concluded that malpractice claims should not be entertained because such claims would "involve an unjustifiable encroachment by the judiciary in the administration of public education."¹ Furthermore, "to allow petitioners' asserted negligence claims to proceed would in effect position the courts ... as overseers of both the day-to-day operation of

the educational process as well as the formulation of its governing policies."² The courts believe that such matters have been properly entrusted to the state and its local school districts.³

In addition, opponents of educational malpractice argue that the ordinary principles of negligence cannot be applied. Achievement in school, or its failure, is "influenced by a host of factors which affect the pupil subjectively, from outside the formal teaching process, and beyond the control of its ministers. They may be physical, neurological, emotional, cultural, or environmental"⁴ in nature.

The courts have held that no workable standard of care exists within the educational process. It is impossible to determine negligence without a standard of care against which to measure.⁵ "Classroom methodology affords no acceptable standards of care, or cause, or injury. The science of pedagogy itself is fraught with different and conflicting theories of how or what a child should be taught."⁶

It has been the opinion of the courts that money damages are "an inappropriate remedy for asserted errors in the educational process."⁷ The courts have also agreed that money damages are "a poor substitute for an education".⁸ Furthermore, "the level of success which might have been achieved had the mistakes not been made will ... be necessarily incapable of assessment, rendering legal cause an imponderable which is beyond the ability

of courts to deal with in a reasoned way."⁹

Opponents of educational malpractice argue that "much burdensome and expensive litigation would be generated if such lawsuits were allowed."¹⁰ By holding schools accountable to a standard of care, they would be exposed to "tort claims-real or imagined-of dissatisfied students and parents in countless numbers."¹¹ Finally, "the ultimate consequences, in terms of public time and money, would burden them, and society, beyond calculation."¹²

The conclusion of the courts "does not mean that parents who believe that their children have been inappropriately classified or placed are without recourse."¹³ Parents are urged to seek recourse through school administrative procedures rather than through tort actions.¹⁴

The Case in Support of Educational Malpractice

Supporters of educational malpractice believe the result of court decisions denying damages is "that the teaching process has become a Pandora's box. While teachers and other officials remain liable for physical injury due to negligent supervision, they are not judicially accountable for other injuries due to their teaching methods, no matter how careless. Thus, the courts have shrouded the teaching process in secrecy and have declined to

question the competency of teachers." ¹⁵

Established principles of negligence, "as applied routinely to other professionals, provide workable standards to protect teachers who act within the realm of reasonable care, yet allow students to recover against teachers who are negligent in the performance of their duties."¹⁶ Negligence is best described as "an action falling below an acknowledged standard of care that results in injury to another person. The basic elements necessary to establish negligence are: 1) a duty to conform to a standard of conduct established to protect, 2) a failure to conform to that standard, 3) a harm suffered that is legally compensable, and 4) a causal relationship between the harm suffered and the failure to conform." ¹⁷

It is an exaggeration to argue that it would be difficult to develop a standard of care for the educational profession. "If generally accepted methods are correctly implemented in identifying the problem, but there are two or more possible courses of action available to correct it, the professional malpractice doctrine does not require the professional to make the right choice, provided there is a reasonable basis for the choice made. This principle is commonly referred to as the 'honest error of judgment rule' and it protects the professional as long as there is room for an honest difference of opinion in the profession. This principle provides an answer to the often-expressed fear that a standard of care can not be devised for

teachers due to the wide divergence of opinion in the profession." ¹⁸

"Although in some cases, quantification of the injury suffered may prove to be difficult, this is not a sound reason for denying a cause of action. In many cases, proof of injury will be quite easy, so there is no justification in denying relief."¹⁹ One example is that of technical errors made by school officials which delay a student's graduation, thus entitling the student to compensation for lost wages during the time the student is out of the work force completing requirements.²⁰

"Even if the injury is not clear, and the damages would be difficult to evaluate, this does not justify denying the plaintiff his cause of action. As pointed out by the majority opinion of the Appellate Division in Hoffman v. Board of Education, damages for psychological and emotional injury have long been recoverable in other contexts, even absent of physical injury or contact."²¹ It has been recognized that "the amount of damages should not be a bar to recovery, noting that mental suffering is no more difficult to estimate in financial terms and no less a real injury than physical pain."²²

There is also a major flaw in denying the existence of a cause of action because of the assumption that it would subject school districts to a 'barrage of suits.'²³ The weakness in the argument is that "the courts advancing it have been extremely inconsistent in applying it. In fact, the only time it is

advanced is in cases sounding in educational malpractice. The courts have freely acknowledged school district liability in negligence supervision cases, as well as suits involving other state agency employees. If the state treasury can endure these types of suits, there is no reason to discriminate solely against educational malpractice."²⁴

Finally, the supporters contend that without legal recourse, the plaintiff is without a remedy. "The state benefits when an individual receives an education. It enables the individual to fend for himself and not to be a burden to the state. However, in a case where an individual is negligently injured by the state, the entire populace should bear this burden at the outset rather than place it entirely upon the innocent party."²⁵

Critical Evaluation

As educators, we must recognize that negligence occurs in the classroom, just as it does on the playground, on the school bus, and in the cafeteria. It is ironic that we are not held legally responsible for the proper placement and education of our students, which is the primary purpose of our schools. Although the harm caused by educational malpractice may be less apparent than a physical injury, a poorly educated mind can be far more debilitating.

In Debra P. v. Turlington, the federal circuit court held that graduation from high school is both a property right and a liberty right.²⁶ It is the court's duty, and not an unnecessary encroachment upon the administration of the public schools, to protect the constitutional rights of students. "That the legislature has delegated authority to administer a particular area to certain administrative agencies should not preclude judicial responsiveness to individuals injured by unqualified administrative functioning. In recognizing a cause of action for educational malpractice, the court would do nothing more than what courts have traditionally done from time immemorial-namely to provide a remedy to a person harmed by the negligent act of another." ²⁷

In determining negligence, it is not an issue of questioning theory or methodology. It is an issue of determining whether reasonable care is exercised in classifying and educating the child. As with school board officials, I believe educators should be liable where they have not acted in good faith or where they have acted in ignorance or disregard of established and unquestioned policies and laws.

"A professional is generally held to a higher standard than an ordinary person. The standard is often established by the profession and public policy. Under the law of torts, once a professional undertakes to perform a duty, the law of negligence requires that it be done with care. Malpractice adds one more

dimension to the element of care, the aspect of a special relationship between the professional and the client."²⁸ The courts have "acknowledged that a special relationship exists between student and teacher."²⁹

A standard of care exists through established negligence principles. It also exists through local school board policies, state statutes, and federal regulations, which address areas such as the diagnosis, admission, and review of special education students, the establishment of minimum competencies to be mastered at each grade level, and the procedures for remediation of students lacking basic skills. Educators must demonstrate that reasonable efforts are made to insure student learning, yet "teachers are not to be the guarantors of their students' success."³⁰

It is my contention that the interests of all involved parties can best be served through school administrative review followed by legal action, if necessary. The concept of recourse should not be a choice between school administrative review and legal action, but a process where by all forms of appeal are exhausted before tort action is taken. I feel legal action should be an option, but used only as a last resort. I believe most malpractice disputes could be resolved through cooperation between the school officials and the parents.

I do not feel that recognition of such legal actions would lead to a barrage of suits. By using a standardized recourse

process through school administrative agencies, many of the disputes would be eliminated. Similar cases dealing with "the constitutional rights of students have not been validated by subsequent empirical evidence." ³¹

It is my contention that the court's primary concern is to assist the school district in correcting erroneous acts, so that any damage to the child's education is minimal. It is the court's responsibility to determine if money damages are appropriate based on the individual case and the circumstances involved. I do not believe that money damages can replace a proper education, but may be justified where irreparable injury has occurred.

In conclusion, the educating of our children is a vital part of the American culture. They deserve the full protection of their rights to an appropriate education and nothing less.

Notes

¹ D.S.W. v. North Star Borough School District, 628 P. 2d. 554, 556 (1981).

² Hunter v. Board of Education of Montgomery County, 439 A. 2d. 582, 585 (1982).

³ Hunter v. Board of Education, 585.

⁴ D.S.W. v. North Star Borough, 555.

⁵ D.S.W. v. North Star Borough, 555.

⁶ D.S.W. v. North Star Borough, 555.

⁷ D.S.W. v. North Star Borough, 556.

⁸ D.S.W. v. North Star Borough, 557.

⁹ D.S.W. v. North Star Borough, 556.

¹⁰ D.S.W. v. North Star Borough, 555.

¹¹ D.S.W. v. North Star Borough, 556.

¹² D.S.W. v. North Star Borough, 556.

¹³ D.S.W. v. North Star Borough, 557.

¹⁴ D.S.W. v. North Star Borough, 557.

¹⁵ T.P. Collingsworth, "Applying the Negligence Doctrine," Journal of Law and Education 11 (October 1982): 480.

¹⁶ Collingsworth, 480.

17 Arlene Patterson, "Professional Malpractice: Small Cloud,
but Growing Bigger," Phi Delta Kappa 62 (November 1980): 193.

18 Collingsworth, 497.

19 Collingsworth, 502.

20 Collingsworth, 502.

21 Collingsworth, 502.

22 Collingsworth, 502.

23 Collingsworth, 503.

24 Collingsworth, 503.

25 Collingsworth, 504.

26 Patterson, 193.

27 Hunter v. Board of Education, 590.

28 Patterson, 193-194.

29 Patterson, 194.

30 Collingsworth, 496.

31 Hunter v. Board of Education, 590.

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